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MISSOULA, MT

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PATRICK E. DUFFY

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

CALVIN Z. GRIFFIN,)	CV C6 -155-M-DWM-JCL
)	
Petitioner,)	
)	
vs.)	ORDER
)	
MIKE MAHONEY,)	
)	
Respondent.)	
_____)	

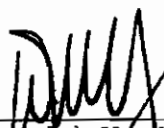
United States Magistrate Judge Jeremiah C. Lynch entered Findings and Recommendation in this matter on October 5, 2006, in which he recommends that this action be dismissed as a second or successive application under 28 U.S.C. § 2254. Petitioner did not timely object and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

The pending Petition is Griffin's seventh, and challenges

the same conviction as his second, third, fourth and fifth petitions, each of which was dismissed as a second or successive application under 28 U.S.C. § 2254. In each prior instance, the Magistrate has, pursuant to 28 U.S.C. § 2244(b)(3), instructed the Griffin to move for an order from the Ninth Circuit Court of Appeals authorizing this court to consider the present Petition. Each time Griffin has complied, the Ninth Circuit has denied his motion. However, in light of the Petitioner's record of repeatedly filing petitions in violation of the statute, Judge Lynch recommends that the Petition be dismissed outright as a successive petition. For the same reasons, Judge Lynch recommends denial of a certificate of appealability. I can find no clear error with Judge Lynch's recommendation.

Accordingly, IT IS HEREBY ORDERED that Griffin's Petition for Writ of Habeas Corpus be DISMISSED as successive in violation of 28 U.S.C. § 2244(b) and a certificate of appealability is DENIED.

DATED this 14th day of December, 2006.



Donald W. Molloy, Chief Judge
United States District Court

